ABU ZAHAR BIN DATO' ANDIKA UJANG

v.

HAJI ABD. MALEK BIN OMAR & 2 ORS.

HIGH COURT MALAYA, KUALA LUMPUR
TUAN LOW HOP BING JC
[SUMMONS NO. D5-22-505-91]
1 NOVEMBER 1994

***INJUNCTION**: Ex-parte injunction restraining first and second defendants from holding office and an extraordinary general meeting respectively until final disposal of plaintiff's claim - Order 29, r. (2C) Rules of High Court (Amendment) No. 2 of 1993 - Whether amendment has retrospective effect - Injunction granted on 5 April 1991 - Amendment came into effect on 2 November 1993 - Whether amendment concerns rules of procedure or affects substantive law, rights or vested rights.*

By injunction dated 5 April 1991, the plaintiff obtained an order restraining the first defendant and the second defendant from holding and acting as the acting President and any other office and from holding an Extraordinary General Meeting or any other meeting whatsoever respectively until the final disposal of the plaintiff's claim by the High Court, Kuala Lumpur. On the other hand, the defendants have applied to the High Court, Kuala Lumpur for the following orders:

a) that the injunction dated 5 April 1991 obtained by the plaintiff be set aside on the basis of the amendment to O. 29, r. (2C) of the Rules of High Court 1980 (Rules of the High Court) Amendment) (No. 2) 1993;

b) that the plaintiff be given 14 days to file an *inter partes* application for injunction;

c) in the event that the plaintiff fails, refuses or neglects to file the *inter-partes* application within 14 days, then damages to be assessed.

Held:

[1] The amendment to O. 29 of the Rules of High Court 1980 being a rule of procedure operates retrospectively and, and as a result, the said injunction is now governed by the provisions therein.

[2] It is trite law that an amendment touching and concerning the rules of procedure but without affecting any substantive law, substantive rights or vested rights should be construed retrospectively.

[3] In this connection, item(b) of the said injunction does not have any legal effect or validity as it obviously stops the holding of a meeting and is prohibited by O. 29 r.(2C) of the Rules of High Court 1980. In the circumstances the defendants' application must be allowed with costs.

[Defendants application allowed with costs]

Case referred to:

Sim Seoh Beng @ Sim Sai Beng & Anor v. Koperasi Tunas Muda Sg. Ara Bhd. [1994] 3 CLJ 382 ***(foll)***

Legislation referred to:
Rules of High Court 1980 O. 29 rr. 2B, 2C

For the plaintiff - Cedric Miranda; M/s Jagjit Singh & Co.
For the defendant - M. Kayveas; M/s M. Kayveas & Co.

JUDGMENT

Low Hop Bing JC:
The defendants herein *vide* their application in Enclosure 42 apply for the following orders:

(a) That the injunction obtained by the plaintiff dated 5 April 1991 be set aside on the basis of the amendment to O. 29 r. (2C) of the Rules of High Court 1980.

(b) That the plaintiff be given 14 days to file an *inter partes* application for injunction.

(c) In the event that the plaintiff fails, refuses or neglects to file the *inter partes* application within 14 days, then damages to be assessed.

From the affidavits filed therein, it is agreed that the defendants' application is based on one ground only i.e. the amendment contained in O. 29, r. (2C).

Order 29 was amended in November 1993 *vide* PU.A.364/93 and reads as follows:

> (2C) Notwithstanding paragraph (2) of this rule, a Judge shall not grant an injunction on an *ex-parte* application if the effect is to stop the holding or progress of a meeting of a body corporate, a society, an association, a union, an organisation, a club or a body of persons whatsoever named.

For the plaintiff, it was submitted that O. 29 is not intended to have retrospective effect and so the injunction dated 5 April 1991 is still effective.

The defendants' Counsel holds a view to the contrary.

For the purposes of my judgment, it is necessary to set out below the terms of the injunction as follows:

(a) An injunction restraining the first defendant to hold and act as the acting president of the second defendant and any other office whatsoever until the final disposal of the plaintiff's claim by this Honourable Court; and

(b) An injunction restraining the second defendant from holding an Extraordinary General Meeting or any other meeting whatsoever which can prejudice the interest and position of the plaintiff as the president of the second defendant until the final disposal of the plaintiff's claim by this Honourable Court.

It is my considered opinion that the amendment to O. 29 being a rule of procedure operates retrospectively and, as a result, the said injunction is now governed by the provisions therein. It is trite law that an amendment touching and concerning the rules of procedure but without affecting any substantive law, substantive rights or vested rights should be construed retrospectively. In this connection, I rule that item (b) of the said injunction does not have any legal effect or validity as it obviously stops the holding of a meeting and is prohibited by O. 29 r. (2C).

In respect of item (a) of the said injunction, O. 29 r. (2B) prescribes a life span of two weeks for an interim injunction obtained on an *ex parte* application. Hence at the end of 2 weeks

from the date on which the injunction is granted, it lapses automatically. Order 29 r. (2B) very clearly states as follows:

> (2B) Unless sooner revoked or set aside, an interim injunction obtained on an *ex-parte* application shall automatically lapse at the end of two weeks from the date on which it is granted.

In *Sim Seoh Beng @ Sim Sai Beng & Anor v. Koperasi Tunas Muda Sg. Ara Bhd.* [1994] 3 CLJ 382, Vincent Ng Kim Khoay J. also holds a similar view. His Lordship said:

> The *ratio decidendi* in the cases of *Malayan Banking Berhad v. Siong Electronic Industries [1981] Sdn. Bhd. & 11 Ors.* [1994] 1 AMR 12 p.651, *Wright v. Hale* 3LT Rep XI S444 and *Yrttiaho v. The Public Curator of Queensland* [1971] 125 CLR 228, *PP v. Datuk Haji Harun bin Haji Idris* [1977] 1 MLJ 14 and the Federal Court case of *Lee Chow Meng v. Public Prosecutor* [1978] 2 MLJ 36, had clearly established the principle that unless an amending provision alters substantive law or removes a substantive right it should be construed retrospectively.

In the circumstances, I allow this application in Enclosure 42 with costs.